

DEPARTMENT OF HEALTH**NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupations Revision Act of 1985 (Act), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2006 Supp.), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Title 17 (Business, Occupations & Professions) (May 1990) of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The purpose of the amendments is to clarify the national examination requirements necessary to become eligible for licensure in naturopathic medicine.

Chapter 52 (Naturopathic Medicine) of Title 17 (Business, Occupations & Professions) (May 1990) is amended as follows:

Section 5205 is amended to read as follows:

5205 NATIONAL EXAMINATION

- 5205.1 Except as otherwise provided in this subtitle, an applicant shall receive a passing score on the required level of the examination sponsored by the Naturopathic Physicians Licensing Examination (NPLEX) basic science examination and clinical science examination sections administered by the North American Board of Naturopathic Examiners (NABNE), or other examination approved by the Board of Medicine.
- 5205.2 A passing score on the Part I series of the Basic Science Examination shall be a minimum converted score of seventy-five (75) on each of the five (5) parts.
- 5205.3 An applicant who does not achieve a score of at least sixty (60) on each of failed parts shall be required to retake the entire Part I series.
- 5205.4 An applicant shall take and pass Part II of the Core Clinical Science Examination within ten (10) years of taking Part I of the Basic Science Examination. Failure to take and pass Part II within the ten (10) year period shall result in the applicant retaking Part I again.
- 5205.5 A passing score on Part II of the Core Clinical Science Examination shall consist of:
- (a) Achieving a minimum converted score of at least seventy-five (75) on all eight (8) Part II Core Clinical Science Examinations; or

(b) Under the Compensatory Model for Part II Core Clinical Science Series:

- (1) Achieving a converted score on the Physical and Clinical Examination of at least seventy-five (75);
- (2) Achieving an average converted score on the eight (8) Part II Core Clinical Science Examinations of at least seventy-five (75) with Clinical Add-On Examination scores not being included in the average; and
- (3) Achieving a converted score for every Part II Core Clinical Science Examination of at least seventy (70).

5205.6 Part II Add-On Examinations for Homeopathy, Minor Surgery and Acupuncture shall not be required.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the D.C. Register. Comments should be sent to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained from the Department at the same address during the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays.

DEPARTMENT OF HEALTH**NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Health, pursuant to the authority set forth under § 302 (14) of the District of Columbia Health Occupations Revision Act of 1985 (Act), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of his intent to take final rulemaking action to adopt the following amendments to Title 17 (Business, Occupations & Professions) (May 1990) of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The purpose of the amendment is to update licensure and practice regulations for the profession of Marriage and Family Therapy.

Chapter 77 (Marriage and Family Therapy) of Title 17 DCMR (Business, Occupations & Professions) (May 1990) is amended as follows:

Section headings for Chapter 77 are amended to read as follows:

- 7700 GENERAL PROVISIONS
- 7701 TERM OF LICENSE
- 7702 EDUCATIONAL REQUIREMENTS
- 7703 EXPERIENTIAL REQUIREMENTS
- 7704 APPLICANTS EDUCATED IN FOREIGN COUNTRIES
- 7705 NATIONAL EXAMINATION
- 7706 WAIVER OF EXAMINATION AND EDUCATION REQUIREMENTS
- 7707 CONTINUING EDUCATION REQUIREMENTS
- 7708 APPROVED CONTINUING EDUCATION PROGRAMS AND
 ACTIVITIES
- 7709 UNAPPROVED CONTINUING EDUCATION PROGRAMS AND
 ACTIVITIES
- 7710 CONTINUING EDUCATION CREDITS
- 7711 LICENSURE BY ENDORSEMENT

- 7712 PRACTICE OF MARRIAGE AND FAMILY THERAPY BY
STUDENTS, GRADUATES AND FIRST TIME APPLICANTS
- 7713 STANDARDS OF CONDUCT
- 7799 DEFINITIONS

Amend section 7702 to read as follows:

7702 EDUCATIONAL REQUIREMENTS

- 7702.1 An applicant shall furnish proof satisfactory to the Board in accordance with § 831(a) of the Act, (D.C. Official Code § 3-1208.31(a) (2004 Supp.)) that the applicant:
- (a) Has successfully completed a master's degree or a doctoral degree in marriage and family therapy from a recognized educational institution; or
 - (b) Possesses a graduate degree in an allied field as defined in section 7799, from a recognized educational institution and has successfully completed graduate level course work which is equivalent to a master's degree in marriage and family therapy, as determined by the Board.
- 7702.2 For the purposes of section 7702.1, qualifying degrees shall consist of at least sixty (60) semester hours or ninety (90) quarter credits in marriage and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE).
- 7702.3 A qualifying graduate degree shall include a total of at least thirty-nine (39) semester hours in the following areas:
- (a) A minimum of three (3) semester hours in family systems theories and their application in working with a wide variety of family structures, which shall include:
 - (1) Studies of families in transition, nontraditional families and blended families; and
 - (2) A diverse range of marriage and family issues presented in a clinical setting;
 - (b) A minimum of six (6) semester hours of marriage and family studies, which shall include:

- (1) Theoretical foundations, history, philosophy, etiology and contemporary conceptual directions of marriage and family therapy or marriage and family counseling; and
 - (2) Preventative approaches, including premarital counseling, parent skill training and relationship enhancement, for working with couples, families, individuals, subsystems and other systems;
- (c) A minimum of nine (9) semester hours of marriage and family therapy, which shall include:
- (1) The practice of marriage and family therapy related to theory, and a comprehensive survey and substantive understanding of the major models of marriage and family therapy or marriage and family counseling; and
 - (2) Interviewing and assessment skills for working with couples, families, individuals, subsystems and other systems, and skills in the appropriate implementation of systematic interventions across a variety of marriage and family issues presented in a clinical setting, including socioeconomic, abuse and addiction issues;
- (d) A minimum of nine (9) semester hours of human development, which shall include:
- (1) Individual development and transitions across the life span;
 - (2) Family, marital and couple life cycle development and family relationships, family of origin and intergenerational influences, cultural influences, ethnicity, race, socioeconomic status, religious beliefs, gender, sexual orientation, social and equity issues, and disability;
 - (3) Human sexual development, function and dysfunction, impacts on individuals, couples, and families, and strategies for intervention and resolution; and
 - (4) Issues of violence, abuse, and substance use in a relational context, and strategies for intervention and resolution;
- (e) A minimum of six (6) semester hours of psychological and mental health competency which shall include:

- (1) Psychopathology, including etiology, assessment, evaluation, and treatment of mental disorders, use of the current diagnostic and statistical manual of mental disorders, differential diagnosis, and multiaxial diagnosis;
 - (2) Standard mental health diagnostic assessment methods and instruments, including standardized tests; and
 - (3) Psychotropic medications and the role of referral to and cooperation with other mental health practitioners in treatment planning, and case management skills for working with individuals, couples, and families;
- (f) A minimum of three (3) semester hours of professional ethics and identity, which shall include:
- (1) Professional identity, including professional socialization, professional organizations, training standards, credentialing bodies, licensure, certification, practice settings, and collaboration with other disciplines;
 - (2) Ethical and legal issues related to the practice of marriage and family therapy, legal responsibilities of marriage and family therapy and marriage and family counseling practice and research, business aspects, reimbursement, record keeping, family law, confidentiality issues, and the relevant code of ethics, including the code of ethics specified by the Board; and
 - (3) The interface between therapist responsibility and the professional, social, and political context of treatment; and
- (g) A minimum of three (3) semester hours of research, which shall include:
- (1) Research in marriage and family therapy or marriage and family counseling and its application to working with couples and families; and
 - (2) Research methodology, quantitative and qualitative methods, statistics, data analysis, ethics, and legal considerations of conducting research, and evaluation of research.

Amend section 7703 to read as follows:

7703

EXPERIENTIAL REQUIREMENTS

- 7703.1 An applicant shall furnish proof satisfactory to the Board that the applicant has completed a minimum of two (2) years of post-graduate work, within five (5) years of graduation, consisting of supervised clinical work experience in marriage and family therapy following completion of the first qualifying graduate degree and practicum required as part of the course of study.
- 7703.2 Unless good cause is shown, the post-graduate work shall be completed within five (5) years after the day the first qualifying degree was conferred and the practicum completed.
- 7703.3 Pursuant to section 7703.1, supervision shall be provided by supervisors approved by the American Association for Marriage and Family Therapy (AAMFT) or by the Board.
- 7703.4 In addition to satisfying the requirements of sections 7703.1 and 7703.2, an applicant shall document successful completion of the following:
- (a) A minimum of fifteen hundred (1,500) hours of face-to-face contact with couples, families and individuals for the purpose of assessment and intervention; and
 - (b) A minimum of three hundred (300) hours of supervised marriage and family therapy, with at least one hundred (100) hours being individual supervision. The remaining hours may be group supervision.
- 7703.5 An applicant who has practiced marriage and family therapy for a period of at least five (5) years prior to the date of submission of the application in a jurisdiction that does not require licensure shall not be required to be supervised pursuant to sections 7703.1, 7703.2, 7703.3, and 7703.4.

Amend section 7706 to read as follows:

7706 WAIVER OF EXAMINATION AND EDUCATION REQUIREMENTS

- 7706.1 The Board shall waive the examination and education requirements of this chapter for applicants licensed in an allied field in the District of Columbia who:
- (a) Hold at least a Master's degree in psychology, social work, psychiatry, professional counseling, or other allied field from an institution of higher education which was accredited by an accrediting body recognized by the Secretary of the United States Department of Education or the Council on Postsecondary Accreditation, or its

successor;

- (b) Prove to the satisfaction of the Board that the applicant has completed at least twenty-four (24) hours of family systems theory training with such training being achieved by:
 - (1) Attending an accredited college course in family systems theory for one (1) semester; or
 - (2) Attending Board-approved workshops and seminars; or
 - (3) Being under the immediate supervision of a Board-approved marriage and family therapist while performing the functions of a marriage and family therapist in face-to-face contact with clients for twenty-four (24) hours;
- (c) Prove to the satisfaction of the Board that the applicant has been performing the functions of a marriage and family therapist, as defined in section 7799 with at least seven hundred and fifty (750) hours of face-to-face contact with clients per year for at least two (2) years immediately preceding March 1, 2007;
- (d) Submit a sworn statement that the applicant has practiced as a marriage and family therapist during the applicable time period through March 1, 2007, including the details of the nature of the practice, time period, name(s) of supervisor(s), and place(s) where the applicant has performed the functions of a marriage and family therapist;
- (e) Submit two (2) letters of recommendation with one from an immediate supervisor who is currently supervising, or has supervised the applicant's work in marriage and family therapy, and one from a professional colleague, with both letters attesting to the fact that the applicant has been practicing as a marriage and family therapist; and
- (f) Apply for licensure within two (2) years of May 1, 2007.

7706.2

Pursuant to section 7706.1, an applicant for licensure who has been in an independent, private practice full time or substantially full time continuously since March 1, 2005 may substitute two (2) letters of recommendation from professional colleagues in an allied field or in marriage and family therapy in lieu of a letter of recommendation from a supervisor.

7706.3 The Board shall waive the examination and education requirements of this chapter for an applicant unlicensed in an allied field in the District of Columbia who:

- (a) Holds at least a master's degree in psychology, social work, psychiatry, professional counseling, or other allied field from an institution of higher education which was accredited by an accrediting body recognized by the Secretary of the United States Department of Education or the council on Postsecondary Accreditation or its successor, and can prove to the satisfaction of the Board that the applicant has been performing the functions of a marriage and family therapist, as defined in section 7799 with at least five hundred (500) hours per year of face-to-face contact with clients for at least five (5) years immediately preceding March 1, 2007, and
- (b) Applies for licensure within two (2) years of March 1, 2007.

7706.4 An applicant unlicensed in an allied field in the District of Columbia shall submit a sworn statement that the applicant has practiced as a marriage and family therapist during the applicable time period through March 1, 2007 including the details of the nature of the practice, time period, name(s) of supervisor(s) and place(s) where the applicant has performed the functions of a marriage and family therapist.

7706.5 In addition to the requirements of section 7706.3 and section 7706.4, an applicant unlicensed in an allied field shall submit two (2) letters of recommendation with one from an immediate supervisor who is currently supervising, or has supervised the applicant's work in marriage and family therapy, and one (1) from a professional colleague, with both letters attesting to the fact that the applicant has been practicing as a marriage and family therapist.

7706.6 An applicant unlicensed in an allied field in the District of Columbia who has been in an independent, private practice full time or substantially full time continuously since March 1, 2002 may substitute two (2) letters of recommendation from professional colleagues in an allied field or in marriage and family therapy in lieu of a letter of recommendation from a supervisor.

Amend section 7707 to read as follows:

7707 CONTINUING EDUCATION REQUIREMENTS

7707.1 This section shall apply to applicants for the renewal, reactivation, and reinstatement of a license for the term expiring March 31, 2006 and for subsequent terms.

- 7707.2 This section shall not apply to applicants for an initial license by reciprocity or endorsement.
- 7707.3 Continuing education credit shall be granted only for programs or activities approved by the Board in accordance with section 7708.
- 7707.4 An applicant for renewal, reactivation, or reinstatement of a license to practice marriage and family therapy, shall submit proof of having completed thirty (30) hours of approved continuing education during the two-year (2) period preceding the date the license expires or preceding the date of the application for reactivation or reinstatement. The thirty (30) hours of approved continuing education shall include:
- (a) A minimum of fifteen (15) of the thirty (30) hours shall be completed in the physical presence of the approved sponsor;
 - (b) Six (6) hours of the thirty (30) hours shall be in ethics;
 - (c) The remaining twenty-four (24) hours of continuing education may consist of current and emerging issues in marriage and family therapy such as the study of:
 - (1) Non-traditional families;
 - (2) Domestic violence;
 - (3) HIV;
 - (4) Aging;
 - (5) End-of-life issues;
 - (6) Addiction and psychopharmacology; and
 - (7) Trauma.
- 7707.5 To qualify for a license, a person in inactive status within the meaning of section 511 of the Act, (D.C. Official Code § 3-1205.11 (2001)), who submits an application to reactivate a license shall submit proof of having met the continuing education requirements for each licensing period that the license was in inactive status.
- 7707.6 To qualify for a license, an applicant for reinstatement of a license to practice marriage and family therapy pursuant to section 512 of the Act (D.C. Official Code § 3-1205.12 (2001)) shall submit proof of having

completed fifteen (15) hours of credit in an approved continuing education program for each year after March 2, 2004 that the applicant was not licensed, up to a maximum of seventy-five (75) hours.

- 7707.7 An applicant for license renewal, reactivation, or reinstatement under this section shall prove completion of required continuing education credits by submitting with the application the following information with respect to each program:
- (a) The name and address of the sponsor of the program;
 - (b) The name of the program, its location, a description of the subject matter covered, and the names of the instructors;
 - (c) The dates on which the applicant attended the program;
 - (d) The hours of credit claimed; and
 - (e) Verification by the sponsor of completion, by signature or stamp.
- 7707.8 An applicant for renewal of a license who fails to submit proof of having completed continuing education requirements by the date the license expires may renew the license up to sixty (60) days after expiration by submitting the proof pursuant to section 7707.7 and by paying the required additional late fee.
- 7707.9 Upon submitting proof and paying the late fee, the applicant shall be deemed to have possessed a valid license during the period between the expiration of the license and the submission of the required documentation and payment of the late fee.
- 7707.10 If an applicant for renewal of a license fails to submit proof of completion of continuing education requirements or pay the late fee within sixty (60) days after the expiration of the applicant's license, the license shall be deemed to have lapsed on the date of expiration.
- 7707.11 The Board may, in its discretion, grant an extension of the sixty (60) day period to renew after expiration if the applicant's failure to submit proof of completion was for good cause.

Amend section 7708 to read as follows:

**7708 APPROVED CONTINUING EDUCATION PROGRAMS
AND ACTIVITIES**

- 7708.1 The Board may, in its discretion, approve continuing education programs and activities that contribute to the growth of an applicant in professional competence in the practice of marriage and family therapy and that meet the other requirements of this section.
- 7708.2 The Board may approve the following types of continuing education if the programs or activity meets the requirement of section 7708.1:
- (a) An undergraduate or graduate course given at an accredited college or university;
 - (b) A seminar or workshop;
 - (c) An educational program given at a conference;
 - (d) Engaging in instructional hours while serving as an instructor or speaker at an institution of higher learning, conference, seminar, workshop, or in-service training;
 - (e) Professional writing, excluding reprints or republications of previously published materials, published within the two (2) years prior to the license renewal date, which consist of articles or books that meet the following requirements:
 - (1) Journal articles shall be published in professional journals; and
 - (2) Chapters authored in books acceptable under this section;
 - (f) Participation in research as a principal investigator or research assistant; and
 - (g) Informal study or a home study program (documented by title, author, name of topic, time spent, written summary, and date(s) completed) carried out individually that is approved by the Board.
- 7708.3 A continuing education program shall meet all of the following requirements:
- (a) Be current in its subject matter and taught by qualified individuals;
 - (b) Be approved by the Board; and
 - (c) Meet one of the following requirements:

(1) Be administered or approved by a health care organization, accredited health care facility, or accredited college or university; or

(2) Be submitted by the program sponsors to the Board for review no less than sixty (60) days prior to the date of the presentation and be approved by the Board.

7708.4 The Board may issue and update a list of approved continuing education programs or providers.

Amend section 7709 to read as follows:

7709 UNAPPROVED CONTINUING EDUCATION PROGRAMS AND ACTIVITIES

7709.1 Continuing education credit shall not be granted for the following:

(a) Organizational activity such as serving on committees or councils or as an officer in a professional organization;

(b) Meetings or activities such as in-service programs which are required as part of one's job; and

(c) Continuing education activity completed before the two (2) year period for which the continuing education credit is submitted.

Amend section 7710 to read as follows:

7710 CONTINUING EDUCATION CREDITS

7710.1 Professional research and writing conducted pursuant to section 7708.2 (e) or (f) shall account for a total of no more than ten (10) of the thirty (30) continuing education units required.

Amend section 7711 to read as follows:

7711 LICENSURE BY ENDORSEMENT

7711.1 The Board shall issue a license to a marriage and family therapist who has a valid unrestricted license from another jurisdiction of the United States or Canada if:

(a) That person, when granted the license, met all requirements contained in section 7702.1 through section 7704.4 and any applicable Board rules; or

- (b) The requirements of the other jurisdiction are, at the time of the application, substantially equivalent to the requirements of this chapter.

Amend section 7712 to read as follows:

7712 PRACTICE OF MARRIAGE AND FAMILY THERAPY BY STUDENTS, GRADUATES AND FIRST-TIME APPLICANTS

7712.1 This section shall apply to the following:

- (a) Students enrolled in recognized schools or colleges as candidates for a degree in marriage and family therapy, or enrolled in a college course pertaining to marriage and family therapy;
- (b) Applicants for a license whose application for a license in the District of Columbia is pending; and
- (c) Post graduates who are meeting the experiential requirements of section 7703.

7712.2 A student, graduate or applicant may perform actions which require a license as a marriage and family therapist only in accordance with the Act and this section.

7712.3 A first-time applicant for a marriage and family therapy license, student or graduate may practice marriage and family therapy under the general or immediate supervision of a marriage and family therapist licensed in the District of Columbia, or under an AAMFT or Board-approved supervisor, while the initial application is pending.

7712.4 A first-time applicant practicing marriage and family therapy pursuant to section 7712.1 (b) who fails the national examination administered by the Association of Marital and Family Therapy Regulatory Boards shall not thereafter continue to practice marriage and family therapy until such time as a marriage and family therapy license is duly issued to that individual.

7712.5 A marriage and family therapist supervising a student, graduate or applicant shall be responsible for the actions performed by the student or applicant during the time of the supervision and is subject to disciplinary action for any violation of the Act or this chapter by the person supervised.

7712.6 A supervisor shall review and co-sign any documentation written by a marriage and family student, graduate or applicant for a marriage and family therapy license.

- 7712.7 A supervisor shall not supervise more than five (5) graduates, students, or first-time applicants at any one time.
- 7712.8 The Board may deny an application for a license from an applicant who is found to have violated the Act or this chapter.
- 7712.9 An unlicensed marriage and family therapist shall identify himself or herself as such at all times when practicing marriage and family therapy.
- 7712.10 An unlicensed marriage and family therapist shall not receive compensation of any nature as a marriage and family therapist, either directly or indirectly from a client, except for a salary from an employer based on hours worked under supervision.

Add section 7713 to read as follows:

7713 STANDARDS OF CONDUCT

- 7713.1 Any holder of a license under this chapter or any person authorized to practice marriage and family therapy under this chapter shall comply with the standards of ethical and professional conduct established by the AAMFT as they may be amended or republished from time to time.
- 7713.2 A marriage and family therapist shall provide an informed consent form, signed by both parties, which shall notify the client of his or her rights and the risks involved during the therapy.
- 7713.3 The following documentation shall be maintained for each session between a marriage and family therapist, student, graduate, or applicant and the client:
- (a) The name of person or persons present;
 - (b) The date of the session;
 - (c) The times the session began and ended;
 - (d) The issues presented (including assessment and history as appropriate);
 - (e) The risks presented; and
 - (f) The risks assessed.

Amend section 7799 to read as follows:

7799

DEFINITIONS

7799.1

As used in this chapter, the following terms shall have the meanings ascribed:

Allied Field – academic study in, or performing the professional functions associated with, psychology, social work, psychiatry, professional counseling, or other comparable mental health profession.

Applicant – a person applying for a license to practice marriage and family therapy under this chapter.

Board – the Board of Marriage and Family Therapy, established by section 217 of the Act, as amended by the Marriage and Family Therapy Amendment Act of 2003, effective March 10, 2004 (D.C. Law 15-88; D.C. Official Code § 3-1202.17).

General supervision – supervision in which an approved marriage and family therapist is available to the supervisee either in person or by a communications device.

Good cause – a legally sufficient reason for granting an extension because of:

- (a) Serious or protracted illness of the applicant;
- (b) The death or serious and protracted illness of a member of the applicant's immediate family; or
- (c) Deployment in a combat zone by the military whenever the United States is engaged in active military operations against any foreign power.

Group supervision – supervision in which an approved marriage and family therapist is available in person to between three (3) and five (5) supervisees.

Immediate supervision – face-to-face supervision in which an approved marriage and family therapist, psychologist, psychiatrist, licensed independent clinical social worker, licensed professional counselor, or advanced practice nurse is either discussing or observing the supervisee's practice.

Individual supervision – supervision in which an approved marriage and family therapist is available in person to one (1) or two (2) supervisees.

Instructional hours – the amount of time spent in actual presentation excluding preparation hours.

Marriage and family therapist – a person licensed to practice marriage and family therapy under the Act.

Unlicensed marriage and family therapist – a person who has completed the educational requirements for a degree in marriage and family therapy but has not met the clinical requirements for licensure.

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments on the proposed rules should be sent in writing to the Department of Health, Office of the General Counsel, 4th Floor, 825 North Capitol Street, NE, Washington, DC 20002. Copies of proposed rules may be obtained at the same address during the hours of 9:00 a.m. to 5 p.m., Monday through Friday, excluding holidays.

DEPARTMENT OF HEALTH**NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Health, pursuant to the authority set forth in section 19(a)(3) of the District of Columbia Pharmacist and Pharmacy Regulation Act of 1980, effective September 16, 1980, (D.C. Law 3-98; D.C. Official Code § 47-2885.18(a)(3)); the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981, (D. C. Law 4-29; D.C. Official Code § 48-901.01 *et seq.*); Mayor's Order 98-48, dated April 15, 1998, Section 4902 of the Fiscal Year 2002 Budget Support Act of 2001, effective October 3, 2001, (D.C. Law 14-28; D.C. Official Code § 7-731); Section 15 of the District of Columbia Drug Manufacture and Distribution Licensure Act of 1990, effective June 13, 1990, (D.C. Law 8-137; D.C. Official Code § 48-714(a)); and Mayor's Order 98-88, dated May 29, 1998; hereby gives notice of his intent to take final rulemaking action to adopt the following amendment to Title 22 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

The purpose of the amendment is to repeal Chapter 5 (Drug Control). This chapter implemented the Dangerous Drug Act - the Act of July 24, 1956, Chapter 7 of Title 33, District of Columbia Code (70 Stat. 612). The Dangerous Drug Act was superceded by the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981, (D. C. Law 4-29; D.C. Official Code § 48-901) rendering Chapter 5 obsolete.

The following rulemaking action is proposed:

TITLE 22 District of Columbia Municipal Regulations, (PUBLIC HEALTH AND MEDICINE) (August 1986) is amended as follows:

Chapter 5 (DRUG CONTROL) is repealed in its entirety.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to the Department of Health, Office of the General Counsel, 825 North Capitol Street, N.E., 4th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 9:00 a.m. and 5:00 p.m. at the address listed above.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF PROPOSED RULEMAKING

The Interim Director of the D.C. Department of Human Services, pursuant to authority set forth in the Rehabilitation Services Program Establishment Act of 2004 (Act) effective April 12, 2005 (D.C. Law 15-332; D.C. Official Code § 32-332), and Mayor's Order 2002-173, dated October 14, 2002, hereby gives notice of the intent to amend Chapter 1 of Title 29 of the District of Columbia Municipal Regulations entitled "Vocational Rehabilitation Services" ("Program") by adopting a new § 117 and §§ 119-126 and to amend § 199 by deleting the entire section and replacing it with new language.

The District published proposed rules for the Program in D.C. Register volume 53, number 6, pages 7398-7438, on Friday September 8, 2006. No public comments were received during the 30-day comment period authorized by the proposed rulemaking. On October 6, 2006, the proposed rules were withdrawn and republished in D.C. Register volume 53, number 40, pages 8103-8142. During the 60-day comment period authorized by the proposed rulemaking, public comments were received and a Public Meeting was held on November 7, 2006 to provide an additional opportunity for public comment regarding the proposed rules, pursuant to 29 U.S.C. § 721(a)(16). The Department has revised the previous proposed rulemaking to reflect the comments received and because the revisions represent substantial alterations, the Department is republishing the Program rules as a proposed rulemaking as required by section 303(f) of the District of Columbia Administrative Procedure Act, as added by section 4 of the District of Columbia Documents Act, effective March 6, 1979, D.C. Law 2-153, D.C. Official Code § 2-553(f) (2006 Supp.).

The Department also gives notice of its intent to take final rulemaking action to adopt these regulations in not less than thirty (30) days from the date of publication of this notice in the D. C. Register.

The proposed sections provide program standards and procedures for the provision of vocational rehabilitation services, including post-secondary education, transition services, and entrepreneurial services. The proposed sections also describe the process for payment for services and goods, client financial participation, order of selection, and record closure for eligible individuals receiving vocational rehabilitation services, and independent living services.

All comments received were reviewed and considered during the development of the final rulemaking contained in this notice. In addition, the Department met with the State Rehabilitation Council established pursuant to 29 U.S.C. § 725 on several occasions to revise the final rulemaking consistent with many of the comments provided. The Department wishes to thank all of the commenters for their thoughtful and detailed comments on the proposed rules. The Department found the commenters' recommendations and accompanying analyses very helpful. As we implement additional rules for the program, we look forward to receiving input from clients, providers, and advocates, based on actual experience with the program. The Department is open to revising these rules in the future as informed by experience, changes in

funding availability, and other relevant information. We look forward to working with our partners in the community- clients, providers and advocates- to make this program as effective and beneficial as possible.

Title 29 DCMR, Chapter 1 is amended by adopting a new Section 117:

117 REASONS FOR CLOSURE OF THE RECORD OF SERVICES

- 117.1 The Rehabilitation Services Administration shall close a client's record of services after the client:
- (a) Maintains a successful employment outcome for a period of ninety (90) days or more in accordance with § 116.1;
 - (b) Indicates in writing that he or she no longer wishes to participate in the rehabilitation program;
 - (c) Fails to comply with the vocational rehabilitation process, required assessments or with provisions agreed to in the Individualized Plan for Employment (IPE) or Independent Living Plan (ILP) and is not working with the Rehabilitation Services Administration to remedy any problems or develop a new IPE or ILP;
 - (d) Fails to respond to a notice of the Rehabilitation Services Administration's intent to close the client's case;
 - (e) Ceases to meet the eligibility criteria for participation in the rehabilitation program in accordance with § 103;
 - (f) Is determined to be incapable of achieving an employment outcome as defined in § 199, because of the severity of the individual's disability in accordance with § 103.13;
 - (g) Ceases to be present in the District of Columbia or cannot be located or contacted;
 - (h) Is determined to have an open vocational rehabilitation case in another state or United States territory;
 - (i) Is institutionalized for ninety days or more or is unavailable for services;
 - (j) Is determined not to have an impediment to employment or not to have a need for independent living;
 - (k) Is unable to accept or maintain employment because suitable transportation was either not feasible or not available;

- (l) Is determined not to need vocational rehabilitation services to prepare for, enter into, engage in, or retain gainful employment consistent with their strengths, resources, priorities, concerns, abilities, capabilities and informed choice in accordance with section §103;
- (m) Is unable to access a source of extended services;
- (n) Is placed in extended employment as defined in § 199;
- (o) Transfers to another Agency that can provide needed services more effectively;
- (p) Is determined to have no disabling condition; or
- (q) Dies.

117.2 Before closing an individual's record of service based on a determination that the individual is incapable of achieving an employment outcome due to the severity of the disability, the Rehabilitation Services Administration shall give the individual an opportunity to participate in a trial work experience with appropriate supports, or if a trial work experience is not available, the Rehabilitation Services Administration shall perform an extended evaluation to determine if the individual is capable of benefiting from vocational rehabilitation services to achieve an employment outcome, in accordance with § 103.14.

117.3 Before closing an individual's record of service, the Rehabilitation Services Administration shall:

- (a) Give the eligible individual thirty (30) days written notice of the proposed closure that includes a request that the individual verify receipt of the notice;
- (b) Provide an opportunity for consultation with the individual or, as appropriate, the individual and the individual's representative; and
- (c) Record in the client's record of services the responses or views of the eligible individual and, as appropriate, the individual's representative, or the client's failure to respond to the thirty (30) days notice of closure and opportunity for consultation.

117.4 When closing a record of services, the Rehabilitation Services Administration shall provide the applicant or eligible individual or, as appropriate, the individual and the individual's representative an advance written notice that includes the following and requests that the individual verify receipt of the notice:

- (a) The reasons for the decision to close the record;
- (b) The individual's appeal rights and the means by which the individual may express and seek remedy for any concerns regarding the record closure, including the opportunity for an administrative review, mediation or an administrative hearing; and
- (c) The Client Assistance Program's role in client representation.

117.5 If the Rehabilitation Services Administration closes a record of services based on a determination that an individual is ineligible for services, the Rehabilitation Services Administration shall refer the individual to other agencies and programs, including, when appropriate, the independent living services program, pursuant to § 104.

117.6 If the Rehabilitation Services Administration closes a record of services based on a determination that the individual is incapable of achieving an employment outcome because of the severity of the individual's disability, the Rehabilitation Services Administration shall review the decision within twelve (12) months, after giving the individual, or as appropriate, the individual's representative written notice of and the opportunity to participate in the review, unless one of the following applies:

- (a) The individual refuses the review;
- (b) The individual is no longer present in the District of Columbia or cannot be located or contacted; or
- (c) The individual has a medical condition which is rapidly progressive or terminal.

117.7 The Rehabilitation Services Administration shall not close an applicant's record before completing the eligibility determination process, unless:

- (a) The applicant declines to participate in, or is unavailable to complete the eligibility assessment process pursuant to § 109;
- (b) The applicant fails to complete the assessment process for determining eligibility and priority for services, and existing information is insufficient to facilitate an eligibility determination; or
- (c) The applicant notifies the Rehabilitation Services Administration that he or she is no longer present in the District of Columbia or has moved to another jurisdiction.

- 117.8 The Rehabilitation Services Administration shall consider an individual rehabilitated when either:
- (a) The individual has met all of the goals stated in the ILP; or
 - (b) The individual achieved the employment outcome that is described in the IPE; and
 - (c) The individual maintained the employment outcome for at least ninety (90) days, and agreed with the rehabilitation counselor at the end of that ninety (90) days that:
 - (1) The individual's employment was satisfactory;
 - (2) The individual was performing satisfactorily on the job;
 - (3) The individual planned to continue the employment; and
 - (4) The individual has been informed of the availability of post employment services.
- 117.9 After the Rehabilitation Services Administration determines that an individual has been rehabilitated, the Rehabilitation Services Administration shall close the individual's record of services.
- 117.10 The Rehabilitation Services Administration shall provide post-employment services as defined in § 199, after the Rehabilitation Services Administration has closed the record of services, if they are necessary to assist the individual in maintaining, regaining, or advancing in employment.
- 117.11 The Rehabilitation Services Administration shall review and reevaluate annually for a minimum of two (2) years and subsequently at the request of the individual, or, if appropriate, the individual's representative, the status of each individual placed in extended employment in a community rehabilitation program or in supported employment who is not earning the minimum wage to determine the interests, priorities and needs of the individual with respect to competitive employment or training for competitive employment.
- 117.12 If the Rehabilitation Services Administration conducts a review pursuant to § 117.11, the individual or, if appropriate, the individual's representative, shall provide input into the review and sign an acknowledgment that the review and reevaluation have taken place.
- 117.13 Following a review and revaluation under § 117.11, and a determination that the individual can achieve an employment outcome, the individual's record of

services shall be reopened, and the IPE amended to reflect the individual's current rehabilitation program.

Title 29 DCMR, Chapter 1 is amended by adding new Sections 119-126:

119 PAYMENT FOR REHABILITATION SERVICES

119.1 The Rehabilitation Services Administration shall pay only for services that are:

- (a) Required to complete the assessment or evaluation process;
- (b) Identified on the client's Individualized Plan for Employment (IPE) or Independent Living Plan (ILP);
- (c) Preauthorized and approved by the Rehabilitation Services Administration through a signed purchase order or other authorizing document, pursuant to the D.C. Procurement Practices Act (D.C. Official Code § 2-301 *et seq.*) and procedures;
- (d) Determined satisfactory based upon the Rehabilitation Services Administration's evaluation of the services; and
- (e) Not available through a comparable service or benefit pursuant to § 114.

119.2 The Rehabilitation Services Administration shall pay only the portion of the cost of services identified as the responsibility of the Rehabilitation Services Administration in the client's IPE or ILP, and shall not pay costs that have been designated as the client's financial responsibility.

119.3 Each service provider who is subject to District of Columbia or other state licensure or certification requirements shall provide evidence of a valid license or certification before the Rehabilitation Services Administration may authorize the provider to render services to its clients. The provider shall maintain licensure or certification during each period of rendering the authorized services. Providers selected must be authorized prior to rendering services as a District vendor pursuant to the District of Columbia Procurement Practices Act (D.C. Official Code § 2-301 *et seq.*).

119.4 Each college or university shall be accredited by an appropriate District, state, or national accrediting organization before the Rehabilitation Services Administration may authorize a client to attend that institution or authorize payment to that institution.

119.5 A private career or proprietary school or other institution subject to regulation shall provide evidence of a valid license, certificate of approval or certification issued by the appropriate licensing or accreditation authority authorizing the

institution to provide the specific courses of instruction or services the individual is seeking before the Rehabilitation Services Administration may authorize an individual to attend that institution or authorize payment to that institution.

- 119.6 Each provider of services shall meet the requirements of the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 *et seq.*).
- 119.7 Each provider shall submit a detailed, completed, and signed invoice for services rendered, along with any required reports or information, in accordance with procedures established by the D.C. Government, before the Rehabilitation Services Administration may authorize payment to the provider or initiate a payment request. The Rehabilitation Services Administration may return to the provider each invoice not properly signed, completed, and accompanied by required reports.
- 119.8 A provider may not charge or accept payment from an individual client of the Rehabilitation Services Administration, the individual's family, or a third party for authorized services, unless the amount of the individual's financial responsibility to the provider has been:
- (a) Preauthorized by the Rehabilitation Services Administration;
 - (b) Agreed to by the individual in writing; and
 - (c) Incorporated into the Rehabilitation Services Administration's written authorization for services to the provider.
- 119.9 The Rehabilitation Services Administration shall pay for authorized services at a rate not higher than the provider's customary charge.
- 119.10 The Rehabilitation Services Administration shall pay for all authorized services in accordance with the Procurement Practices Act (D.C. Official Code § 2-301 *et seq.*).

120 PAYMENTS FOR GOODS

- 120.1 The Rehabilitation Services Administration shall pay only for goods that are:
- (a) Determined by the Rehabilitation Services Administration to be necessary for the client to participate in the assessment or evaluation process;
 - (b) Identified on the client's Individualized Plan for Employment (IPE) or Independent Living Plan (ILP);
 - (c) Preauthorized and approved by the Rehabilitation Services Administration through either a signed purchase order or other authorizing document;

- (d) Determined satisfactory by the Rehabilitation Services Administration; and
 - (e) Not available through a comparable service or benefit pursuant to § 114.
- 120.2 The Rehabilitation Services Administration shall pay only the portion of the cost of goods identified as the responsibility of the Rehabilitation Services Administration on the client's IPE in accordance with § 124, and shall not pay costs that have been designated as the client's financial responsibility.
- 120.3 Each provider of goods shall comply with the requirements of § 119.3 during the entire period of providing goods.
- 120.4 If a provider supplies goods pursuant to a purchase order or other authorizing document, the provider shall submit the invoice for the delivered goods in accordance with procedures established by the Rehabilitation Services Administration. The amount of the invoice shall not exceed the cost specified in the purchase order or authorizing document.
- 120.5 A provider may not charge or accept payment from a client of the Rehabilitation Services Administration, the client's family, or a third party for authorized goods unless the amount of the client's financial responsibility to the provider has been:
 - (a) Preauthorized by the Rehabilitation Services Administration;
 - (b) Agreed to by the client in writing; and
 - (c) Incorporated into the Rehabilitation Services Administration's authorization for goods from the provider.
- 120.6 The Rehabilitation Services Administration shall pay for authorized goods at a rate equal to or lesser than:
 - (a) The provider's customary charge; and
 - (b) The rate established as the result of competitive bidding conducted by the Department of Human Services, Office of Contracts and Procurement as reflected in an issued purchase order.
- 120.7 The Rehabilitation Services Administration shall not purchase land or buildings or pay for the cost of construction or additions to a building.
- 120.8 The Rehabilitation Services Administration shall provide no more than one (1) pair of glasses and frames per year unless additional glasses are required by a change in prescription or necessitated by unforeseen circumstances, and no comparable benefit is available to pay for the glasses.

- 120.9 The Rehabilitation Services Administration may purchase assistive technology devices and aids for an eligible individual pursuant to an assistive technology assessment which establishes a need for the device, if no comparable benefit is available to pay for the assistive technology device(s).
- 120.10 The Rehabilitation Services Administration shall provide no more than one of each type of assistive technology device or aid unless a new evaluation shows that a replacement or additional device or aid is warranted or unforeseen circumstances warrant repair or replacement to enable the individual to maintain employment.
- 120.11 The Rehabilitation Services Administration shall provide computers, books, tools, and other training materials that are necessary to complete training pursuant to § 113.2, only after an eligible individual provides one of the following:
- (a) Written verification from the chairperson of the relevant department, or director of the training program, that a specific computer or specific books, tools, and other training materials are required for the course of study;
 - (b) The catalog or syllabus for the course which specifies that a specific computer or specific books, tools, and training materials are a requirement for all students; or
 - (c) Written documentation from a licensed professional that the eligible individual requires a specific computer, or specific books, tools, and training materials as an accommodation for the client's disability and functional limitations.
- 120.12 The Rehabilitation Services Administration shall not pay for upgrades, repairs, or maintenance for computer systems or operating programs except as provided in § 120.11.
- 120.13 When an individual provides documentation that a computer is required to complete training pursuant to § 120.11, the Rehabilitation Services Administration shall first determine if a comparable computer is available through the computer loan program. If no computer is available pursuant to the computer loan program, the Rehabilitation Services Administration shall purchase a computer for use by the individual.
- 120.14 A client's request for a computer, books, tools and training equipment made in accordance with §§ 113.2 and 120.11 must be submitted by the client as soon as possible, but no later than one week after the first day of training, and must include the cost of each item or supply requested. Failure to comply with § 120.11 may result in a delay of the receipt of supplies.

120.15 The Rehabilitation Services Administration may establish other reasonable purchase requirements from time to time, through public notice.

120.16 The Rehabilitation Services Administration shall pay for all goods authorized in accordance with the Procurement Practices Act (D.C. Official Code § 2-301 *et seq.*).

121 PAYMENT FOR DENTAL SERVICES, PRESCRIPTION GOODS, PRESCRIPTION DRUGS AND MEDICAL SUPPLIES

121.1 The Rehabilitation Services Administration shall pay for dental services for eligible individuals under the following circumstances:

- (a) The dental condition is documented by a licensed and certified dental professional as:
 - (1) Necessary to render the individual employable or required to prevent a serious physical illness; or
 - (2) A significant maxillofacial problem and/or disease of the gums that is a serious impediment to employment or may cause or aggravate specific health condition;
- (b) Comparable benefits are not available in accordance with § 114;
- (c) The dental consultant, who is not the treating dentist, has reviewed and approved the dental service to ensure that the service provided is necessary to achieve the individual's vocational goal or independent living goal;
- (d) The Rehabilitation Services Administration has approved the services for payment; and
- (e) The treating dentist provides a post-dental service report.

121.2 The Rehabilitation Services Administration shall purchase prescription goods, prescription drugs, and medical supplies under the following circumstances:

- (a) The Rehabilitation Services Administration determines it is necessary to achieve the individual's vocational goal or independent living goal;
- (b) The Rehabilitation Services Administration determines that no comparable benefit is currently available to the client, in accordance with § 114;

- (c) The Rehabilitation Services Administration is provided a current, valid prescription from an authorized, licensed medical or other professional; and
- (d) Unless a particular brand is specified by an authorized, licensed medical or other professional, the Rehabilitation Services Administration shall purchase generic drugs, goods and supplies.

121.3 The Rehabilitation Services Administration shall procure authorized dental services, prescription goods, and medical supplies in accordance with the Procurement Practices Act (D.C. Official Code § 2-301 *et. seq.*).

122 POST-SECONDARY EDUCATION AND TRAINING

122.1 The Rehabilitation Services Administration may fund post-secondary educational expenses in accordance with this section, and as specified in an eligible individual's Individualized Plan for Employment (IPE).

122.2 The Rehabilitation Services Administration may fund post-secondary education and training consistent with this section, if an eligible individual requesting post-secondary educational services:

- (a) Provides documentation of acceptance for matriculation from an accredited post-secondary institution as defined in § 199;
- (b) Demonstrates the aptitude and ability to succeed in college level work in the particular course of study identified in the IPE through either past post-secondary academic performance or a diagnostic assessment conducted by a qualified professional, which may include at a minimum:
 - (1) A career assessment; and
 - (2) Psycho-educational assessment;
- (c) Resolves any defaulted student loan or obtains a waiver from the Department of Education regarding any defaulted student loan;
- (d) Submits a financial aid application annually to the following:
 - (1) The post-secondary institution the individual is attending or to which the individual has applied;
 - (2) The D.C. Tuition Assistance Grant, if applicable;

- (3) All other District or state funded educational assistance programs and school grants or financial aid;
- (4) The U.S. Department of Education (The Free Application for Federal Student Aid (FAFSA));
- (5) All federal grant programs, including the Pell Grant; and
- (6) The Leverage Educational Assistance Program (LEAP);
- (e) Provides the Rehabilitation Services Administration a copy of the FAFSA Student Aid Report (SAR) and any other aid award from each source; and
- (f) Signs the Rehabilitation Services Administration's form authorizing the post-secondary institution to provide the Rehabilitation Services Administration with information relating to the individual's training or educational program, including, but not limited to:
 - (1) A copy of the individual's official transcript;
 - (2) A copy of the individual's grades at the conclusion of each semester;
 - (3) Attendance records;
 - (4) Financial awards; and
 - (5) Notice of any disciplinary or adverse action; and
 - (6) A copy of the individual's American's with Disabilities Act (ADA) accommodation plan.

122.3 The Rehabilitation Services Administration shall pay the published tuition rate of any public post-secondary institution located within Washington D.C. that offers an academic program necessary to achieve the client's vocational goal. Public post-secondary institutions located within the Washington D.C. Metropolitan Area, as defined in § 199, may be treated as if located in Washington, D.C.

122.4 If no public post-secondary institution located in the Washington, D.C. Metropolitan Area can provide the course of study or program essential to achievement of a client's vocational goal, the Rehabilitation Services Administration shall pay the actual tuition costs of the least expensive non-public post-secondary institution located in the Washington, D.C. Metropolitan Area that offers an academic program necessary to achieve the client's vocational goal.

- 122.5 If no post-secondary institution in the Washington, D.C. Metropolitan Area can provide the course of study or program essential to achievement of a client's vocational goal, the Rehabilitation Services Administration shall pay the published educational cost of the most appropriate and cost-effective out of state post-secondary institution.
- 122.6 If an individual chooses to attend a post-secondary institution or training program that is located outside of the Washington, D.C. Metropolitan Area, when the necessary academic or training program is available within the Washington, D.C. Metropolitan Area, the Rehabilitation Services Administration shall pay no more than:
- (a) Three times the tuition rate published by the University of the District of Columbia for the applicable number of credit hours and academic term; or
 - (b) The published rate for the necessary training program that is available within the Washington, D.C. Metropolitan Area if the training program is not based on credit hours.
- 122.7 The individual shall be responsible for educational/training costs in excess of the payment rates specified in § 122.6.
- 122.8 The amount of financial assistance the Rehabilitation Services Administration may provide for post-secondary educational and training expenses for each eligible individual shall not exceed the amount specified in the annual student expense budget determined by the post-secondary institution's financial aid administrator, in accordance with the Higher Education Act of 1965 as amended:
- (a) Adjusted to reflect the amount of tuition established under §§ 122.3, 122.4, 122.5 or 122.6;
 - (b) Plus the cost of educational and training-related expenses that are required to enable the individual to have access to and participate in the institution's educational or training program, such as:
 - (1) Disability-related support services for which the institution is not responsible;
 - (2) Adaptive equipment for which the institution is not responsible in accordance with § 120; and
 - (3) Books and supplies in accordance with § 120;
 - (c) Minus the amount of:

- (1) Grants and scholarships awarded to the individual to attend the post secondary institution; and
- (2) The individual or family financial participation in accordance with §124.

122.9 The Rehabilitation Services Administration shall not fund on or off-campus room and board, except in exceptional circumstances. Exceptional circumstances shall be documented annually, and shall include the following:

- (a) The post-secondary educational institution requires on-campus housing, and the requirement is documented by the student handbook or other official school documents annually;
- (b) Room and board are necessary to accommodate a client's disabilities, as documented annually by a professional with expertise in the area of the individual's disability, and the individual is actively engaged in an educational or training program; or
- (c) Room and board are necessary for the individual receiving services outside of the Washington, D.C. Metropolitan Area, pursuant to § 122.5.

122.10 An eligible individual who is receiving post-secondary educational expenses in accordance with this section, shall continue to receive financial assistance if the individual:

- (a) Maintains eligibility in accordance with § 103;
- (b) Maintains a minimum cumulative grade point average of C or its equivalent, computed annually;
- (c) Maintains eligibility for financial aid in accordance with the post-secondary institution's written criteria for satisfactory academic progress toward a degree, certificate, or certification;
- (d) Attends only one post-secondary institution per academic/training year, transferring only after receiving prior approval of the Rehabilitation Services Administration and the amendment of the IPE to reflect the new institution unless exceptional circumstances warrant a change;
- (e) Secures the prior approval of the Rehabilitation Services Administration and amends the IPE to specify any change(s) before changing the course of study or the major agreed upon in the individual's IPE;
- (f) Keeps current his or her financial obligations with the post-secondary institution;

- (g) Participates in annual reviews for financial participation in the cost of services pursuant to § 124;
- (h) Resolves any defaulted student loans or obtains a waiver from the Department of Education regarding any defaulted student loans;
- (i) Annually submits a financial aid application in accordance with § 122.2(d);
- (j) Annually provides the Rehabilitation Services Administration a copy of the FAFSA Student Aid Report (SAR) and any other aid awards or scholarships from all sources in accordance with § 122.2(e); and
- (k) Signs the Rehabilitation Services Administration's form authorizing each post-secondary institution to provide the Rehabilitation Services Administration with information relating to the individual's training or educational program pursuant to § 122.2(f), at the end of each semester, for the duration of any training program, and the institution has provided the individual's cumulative grade point average.

122.11 An individual must obtain prior written approval from the Rehabilitation Services Administration for any costs the individual expects the Rehabilitation Services Administration to assume. The Rehabilitation Services Administration shall not be responsible for the payment of any post-secondary educational or training costs that the individual may incur before receiving the Rehabilitation Services Administration's written commitment to fund the costs at the post-secondary educational or training institution.

122.12 The Rehabilitation Services Administration shall authorize and process payment of post-secondary educational and training expenses, consistent with §§ 119, 120, 121 and this section, only after:

- (a) The Rehabilitation Services Administration receives the individual's cumulative grade point average at the end of each academic year; and
- (b) The institution submits to the Rehabilitation Services Administration an invoice that states at a minimum, the costs for courses, training, registration, fees, and other agreed upon services; and
- (c) The Rehabilitation Services Administration receives documentation from the training institution that the client has paid his or her authorized share of training costs.

- 122.13 The Rehabilitation Services Administration may approve only one transfer from one post-secondary institution to another post-secondary institution and only one change in the vocational goal during the vocational rehabilitation process, unless it is determined that exceptional circumstances warrant a change.
- 122.14 The Rehabilitation Services Administration shall not fund the costs of a post-secondary education for, at the least, the academic semester following:
- (a) Dismissal by a post-secondary institution;
 - (b) The individual's failure to maintain satisfactory academic or other progress in accordance with the institution's academic or performance requirements or financial aid eligibility criteria; or
 - (c) The individual's failure to meet the institution's requirements for progress toward earning a degree or to earn the requisite certificate for the course of study.
- 122.15 Subsequent to § 122.14, the Rehabilitation Services Administration may reconsider funding costs of post-secondary education if the individual:
- (a) Provides documentation of successful completion of a C or better while maintaining a full-time schedule at a post-secondary educational institution for one semester; and
 - (b) Complies with the requirements set forth in § 122.2.
- 122.16 The Rehabilitation Services Administration may consider or reconsider an individual's written request to pursue a post-secondary educational program on less than a full-time basis,
- (a) Only if the request is accompanied by written documentation from a licensed professional with expertise in the area of the individual's disability, who has assessed the individual's capabilities and determined the individual's need for a reduction from full-time attendance due to their disability. The individual shall submit the request and written documentation annually; or
 - (b) The individual provides documentation that less than full-time attendance is the only way that he or she can pursue the educational or training program.
- 122.17 The Rehabilitation Services Administration shall not provide financial assistance for an individual to:

- (a) Enroll in a course that is not required for completion of the educational or training program;
- (b) Engage in travel that is not a requirement for completion of the course of study or training or travel outside of the United States; or
- (c) Repeat a course or training program for which the Rehabilitation Services Administration has already paid, unless documentation establishes that exceptional circumstances warrant authorization to repeat the course.

122.18 An individual shall not withdraw from a course after the institution's drop and add period is over without receiving the Rehabilitation Services Administration's prior approval. This requirement for prior approval includes, but is not limited to, instances where the individual has a medical certification of incapacitation that prevents further matriculation.

122.19 An individual who fails to comply with § 122.18 shall be responsible for paying the institution any costs associated with the individual's unauthorized withdrawal.

122.20 An individual receiving funding for post-secondary education or related expenditures shall notify the Rehabilitation Services Administration immediately of any change in his or her status as a student or trainee, such as:

- (a) Dismissal, probation or suspension from a post-secondary institution or training program;
- (b) Interruption in courses or training for any reason;
- (c) Disciplinary actions that affect completion of the post-secondary or training program; and
- (d) Changes in financial awards or the training institution's authorization.

122.21 An individual who fails to comply with § 122.20 may be responsible for paying the academic or training institution any costs associated with the individual's failure to report an immediate change in his or her status as a student or trainee.

122.22 The Rehabilitation Services Administration shall not pay for the costs of post-secondary education for the semester in which the individual fails to comply with § 122.20.

122.23 The Rehabilitation Services Administration may provide financial assistance to an eligible individual for graduate education only when:

- (a) Graduate or professional certification is documented as a commonly recognized standard for entry into the field which is the employment goal on the IPE;
- (b) The approved IPE states that graduate or professional education is necessary and essential to the achievement of the individual's employment goal;
- (c) The graduate or professional school has accepted the individual;
- (d) The Rehabilitation Services Administration approves the request for graduate or professional study; and
- (e) The individual who is enrolled in a graduate or professional program maintains the grade point average required by the graduate or professional school for progress toward the specific degree or certificate.

122.24 An individual who is receiving services under an IPE before the effective date of this section shall not be subject to §§ 122.3, 122.4, 122.5, and 122.6 unless:

- (a) The vocational goal identified in the IPE is achieved;
- (b) The individual's record of service is closed; or
- (c) The individual changes their vocational goal, course of study, or major agreed upon in the individual's IPE.

123 THE ENTREPRENEURIAL PROGRAM

123.1 The Rehabilitation Services Administration shall provide an entrepreneurial program that assists a client in starting his or her own business in the District of Columbia.

123.2 When an eligible individual elects a self-employment outcome, the vocational rehabilitation counselor shall:

- (a) Explore and discuss with the individual the nature of the desired business, the feasibility of the business, and the individual's preparation for operating the business;
- (b) Prepare a written referral to the entrepreneurial program for the individual who wishes to pursue a self-employment goal;
- (c) Schedule an interview for the individual and the counselor to consult with the entrepreneurial program;
- (d) Inform the individual about:

- (1) How the entrepreneurial program works;
 - (2) Required training and training sources for would-be entrepreneurs;
 - (3) The type of business funding that is available;
 - (4) The type of funding the would-be entrepreneur must obtain to start the business enterprise; and
 - (5) The support services that are available to assist the entrepreneur in determining the feasibility of the business, preparing for the business, preparing the business plan, and seeking funding for the business;
- (e) Determine, along with the individual, any supportive services the individual may require to participate in the entrepreneurial training, prepare the business plan, and prepare for operation of the business; and
- (f) After receipt of the Entrepreneurial Program's report and recommendation for entrepreneurial services, develop an Individualized Plan for Employment (IPE) that addresses the individual's entrepreneurial goal, training needs and supportive services.

123.3

Upon receipt of a referral for entrepreneurial services, the Entrepreneurial Program shall consult with the individual and the counselor to:

- (a) Assess the individual's:
- (1) Entrepreneurial interest;
 - (2) Past training and related experiences;
 - (3) Practical skills for operating a business; and
 - (4) Command of the skills necessary to operate a business or be self-employed in accordance with the entrepreneurial goal;
- (b) Determine training required to prepare the individual to open and operate the determined business;
- (c) Assess how the individual's disability may affect his or her ability to operate the business; and
- (d) Determine supports or services the individual may require to operate the business.

- 123.4 The Entrepreneurial Program shall send a report and recommendation for services to the individual's counselor for IPE development to provide for the training and support services the individual requires to learn how to operate a business, develop a business plan and open and operate the business, after completion of an assessment of the individual's entrepreneurial skills and needs.
- 123.5 The Rehabilitation Services Administration may purchase goods and services for a business enterprise, including the occupational licenses, tools, equipment, initial stocks, and supplies necessary to open the business, in accordance with §§119, and 120, only after the individual:
- (a) Demonstrates that he or she possesses the basic knowledge and skills required to manage a business through either:
 - (1) Successful completion of training as required in the individual's IPE;
 - (2) Successful completion of related courses; or
 - (3) Past work experience or entrepreneurial experience;
 - (b) Submits a business plan completed in accordance with § 123.8, and approved by the Chief of the Entrepreneurial Program;
 - (c) Submits a request for funding; and
 - (d) Provides documentation of any additional funding secured for the business.
- 123.6 In accordance with § 123.5 (a)(2), an individual may demonstrate knowledge and skills required to manage a business by providing documentation of completion of the following or comparable courses with a cumulative grade point average of "C" or better at an accredited college or university as a regular or non-degree student:
- (a) Entrepreneurship/self-employment;
 - (b) Principles of Accounting;
 - (c) Introduction to Business;
 - (d) Principles of Finance; and
 - (e) Marketing.

123.7 In accordance with § 123.5(a)(3), an individual may demonstrate knowledge and skills required to manage a business through past work or entrepreneurial experience by providing the following documentation:

- (a) A detailed description of the work or entrepreneurial experience that he or she believes demonstrates the knowledge and skills required to operate a business;
- (b) The nature of the business;
- (c) Clientele served;
- (d) Numbers of clients/customers;
- (e) The location of the business;
- (f) The number of years he or she operated the business; and
- (g) The reason why the business ceased to operate or why the individual ceased to function with the business.

123.8 In accordance with § 123.5(b), an individual must provide a business plan that:

- (a) Describes the nature of the business and the income source;
- (b) Identifies funding sources other than the Rehabilitation Services Administration and projects income streams that are sufficient to maintain the business;
- (c) Provides a Five Year Plan for the business that addresses:
 - (1) Five years of projected sales;
 - (2) The targeted clientele;
 - (3) The full range of services to be offered; and
 - (4) Sustainability of the business for a five-year period and in a downturned market;
- (d) Identifies the specific items and costs for which the business is seeking funding from the Rehabilitation Services Administration and states the role they are to play in the operation of the business and generation of business income; and

- (e) Is approved by the Chief of the Entrepreneurial Program.

123.9 The Rehabilitation Services Administration, directly or through its training sources, shall assist the client in identifying a lending institution to which the client may apply for a business loan, if the client successfully completes all of the required training and develops a business plan that meets the Rehabilitation Services Administration's approval.

123.10 An individual who is receiving services under an IPE which specifically identifies an entrepreneurial vocational goal before the effective date of this section shall continue to be served in accordance with their IPE until the vocational goal identified in the IPE is achieved or their record of service is closed.

124 CLIENT PARTICIPATION IN THE COST OF SERVICES

124.1 The Rehabilitation Services Administration shall consider the financial need of an eligible individual through uniform application of a financial need test. The test shall accord equitable treatment in determining an eligible individual's participation in the cost of rehabilitation services that are subject to the financial need test pursuant to §§ 124.5 and 124.6, and authorized by the Rehabilitation Services Administration.

124.2 Unless an eligible individual is exempt from participation in the financial need test pursuant to §§ 124.3, 124.4 or 124.17, an eligible individual shall participate in a financial need test:

- (a) At the time the first Individualized Plan for Employment (IPE) or Independent Living Plan (ILP) is developed;
- (b) Annually on or around the date that the first IPE or ILP became effective; and
- (c) Each time there is a change in an eligible individual's financial status.

124.3 An eligible individual is not required to contribute to the cost of vocational rehabilitation services if they are:

- (a) A ward of the District of Columbia Government because of dependency or delinquency commitments;
- (b) A recipient of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI);
- (c) A client of the Income Maintenance Administration who meets the requirements for Income Maintenance Administration-related rehabilitation programs; or

- (d) An eligible individual receiving any other form of public assistance income.

124.4

The following vocational rehabilitation services and independent living services, as defined in § 199, shall not be subject to a financial need test:

- (a) Assessment and related services to determine eligibility, priority for services, and vocational rehabilitation needs;
- (b) Counseling, guidance and referral services that the Rehabilitation Services Administration provides;
- (c) Maintenance when additional costs are incurred as a result of undertaking or participating in assessment services;
- (d) Transportation when required to enable an individual to participate in assessment services;
- (e) Personal assistance services during the assessment process;
- (f) Placement services, including job coaching and on-job training that the Rehabilitation Services Administration provides;
- (g) Auxiliary aids or services such as interpreter services or reader services that an individual requires in order to participate in the assessment process; and
- (h) Non-assessment services that are provided to an individual with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences or an extended evaluation.

124.5

The following rehabilitation services, as defined in § 199, shall require the financial need test to determine the eligible individual's participation in the cost of rehabilitation services as shown on the Client Financial Statement:

- (a) Physical and mental restoration;
- (b) Maintenance;
- (c) Telecommunications, sensory and other technological aids and devices;
- (d) Transportation for other than diagnostic services;

- (e) Training;
- (f) Occupational licenses;
- (g) Books and training materials;
- (h) Tools, equipment and initial stock; and
- (i) Supplies and other goods and services including services to family members.

124.6

The following independent living rehabilitation services shall require the financial need test to determine the eligible individual's participation in the cost of rehabilitation services as shown on the Client Financial Statement:

- (a) Physical and mental restoration services;
- (b) Housing incidental to the provision of any independent living rehabilitation services, including appropriate accommodations to and modifications of any space utilized to serve individuals with severe disabilities;
- (c) Transportation;
- (d) Recreational services;
- (e) Services to family members of individuals with severe disabilities of a type which would require economic need consideration when necessary for improving the individual with disabilities' ability to live and function more independently; and
- (f) Telecommunication, sensory and other technological aids and devices.

124.7

The following individuals shall participate in the cost of rehabilitation services:

- (a) The eligible individual and the individual's spouse; and
- (b) Any other individual who:
 - (1) Claims the eligible individual as a dependent for federal tax purposes; or
 - (2) Is required to provide financial information on the eligible individual's free application for federal student aid, in accordance with the Higher Education Act of 1965, (20 U.S.C. §§ 1071 *et seq.*) as amended.

- 124.8 An individual who is required to participate in the cost of services, in accordance with this chapter, shall, as a condition for the provision of those services subject to the financial need test in accordance with §124.5 and 124.6:
- (a) Complete the financial statement prescribed by the Rehabilitation Services Administration;
 - (b) Promptly notify the Rehabilitation Services Administration of any changes in financial status; and
 - (c) Participate in the Rehabilitation Services Administration's review of the eligible individual's financial status, in accordance with § 124.2.
- 124.9 The amount of the eligible individual's financial participation in the cost of rehabilitation services, is based upon available family income and family unit size (number of dependents claimed for federal tax purposes) and determined in accordance with the schedule in § 124.12.
- 124.10 Available income is calculated by:
- (a) Adding annual adjusted gross income as reported on the most recent federal and state tax return plus current nontaxable income, including but not limited to, Social Security, other than Social Security Insurance (SSI) or Social Security Disability Insurance (SSDI), workers' compensation, and veteran benefits;
 - (b) Adding all other income as set forth in § 124.14;
 - (c) Subtracting any deductible medical and dental expenses as reported on the Internal Revenue Service Form 1040, Schedule A, of the most recent federal and state tax return; and
 - (d) Subtracting any substantiated disability-related expenses not included in deductible dental and medical expenses in paragraph (c) of this subsection.
- 124.11 When the current income of the eligible individual or the person who claims the individual for federal income tax purposes is substantially different from that reported on the most recent federal tax return, the available income is determined using current financial information.
- 124.12 Each eligible individual shall participate in the cost of rehabilitation services that are subject to the financial needs test pursuant to §§ 124.5 and 124.6, as shown on the following financial participation schedule:

FINANCIAL PARTICIPATION SCHEDULE

Number of Dependents:	1	2	3	4	5	6	7	8
Available Income	Amount of Annual Individual/Family Financial Participation:							
1. \$19,000 and below	0	0	0	0	0	0	0	0
2. \$19,001- \$23,000	\$184	0	0	0	0	0	0	0
3. \$23,001- \$27,000	\$313	\$219	0	0	0	0	0	0
4. \$27,001- \$31,000	\$471	\$363	0	0	0	0	0	0
5. \$31,001 - \$35,000	\$660	\$536	\$289	0	0	0	0	0
6. \$35,001- \$39,000	\$879	\$740	\$463	\$324	0	0	0	0
7. \$39,001- \$43,000	\$1,128	\$974	\$666	\$513	\$	0	0	0
8. \$43,001- \$47,000	\$1,406	\$1,238	\$900	\$731	\$394	0	0	0
9. \$47,001- \$51,000	\$1,715	\$1,575	\$1,164	\$980	\$613	\$417	0	0
10. \$51,001- \$55,000	\$2,054	\$1,855	\$1,458	\$1,259	\$861	\$663	0	0
11. \$55,001 - \$59,000	\$2,423	\$2,209	\$1,781	\$1,568	\$1,140	\$926	\$499	
12. \$59,001- \$63,000	\$2,821	\$2,592	\$2,135	\$1,906	\$1,449	\$1,220	\$762	0
13. \$63,001- \$67,000	\$3,250	\$3,006	\$2,519	\$2,275	\$1,788	\$1,544	\$1,056	\$569
14. \$67,001- \$71,000	\$3,709	\$3,450	\$2,933	\$2,674	\$2,156	\$1,898	\$1,380	\$86
15. \$71,001 - \$75,000	\$4,198	\$3,924	\$3,376	\$3,103	\$2,555	\$2,281	\$1,734	\$1,18
16. \$75,001- \$79,000	\$4,716	\$4,428	\$3,850	\$3,561	\$2,984	\$2,695	\$2,118	\$1,540
17. \$79,001-\$83,000	\$5,265	\$4,961	\$4,354	\$4,050	\$3,443	\$3,139	\$2,531	\$1,924
18. \$83,001 and above	6.5% 7.0%	6.125% 6.625%	5.375% 5.875%	5% 5.5%	4.25% 4.75%	3.875% 4.375%	3.125% 3.625	2.375% 2.875%

124.13 The amount of individual or family participation when the available income is above eighty three thousand dollars (\$83,000) per year, is determined by multiplying the available income by the percentage shown in the appropriate column.

124.14 The financial resources of an individual, or the family of a dependent individual, means the financial resources that are readily available for the support of the individual. Resources that are readily available during the period of time that the individual has an approved IPE or ILP in effect, include, but are not limited to:

- (a) Wages;
- (b) Pension, compensation, or insurance income;

- (c) Income from investments;
- (d) Income from entrepreneurial activities;
- (e) Assets that can be liquidated within one year from the time the client's vocational rehabilitation program begins such as:
 - (1) Savings accounts;
 - (2) Stocks;
 - (3) Bonds;
 - (4) Certificates of deposit; and
 - (5) Other income available to the client;
- (f) Resources invested in IRA, Keogh, and deferred compensation plans, if those resources can be accessed, without penalty, while the IPE or ILP is in effect; and
- (g) Income from other sources.

124.15 If the individual's required financial contribution pursuant to § 124.12 is equal to or greater than the entire cost of services, the individual is financially responsible for the entire cost of services that are subject to the financial need test pursuant to §§ 124.5 and 124.6.

124.16 When an eligible individual, or any other person, who is required to participate in the financial need test chooses not to participate in the determination of financial need, submit supporting documentation, or contribute financially as required, the Rehabilitation Services Administration shall provide only services that do not require financial participation.

124.17 An individual who is receiving services under an IPE or ILP before the effective date of this section shall continue to be served in accordance with their IPE or ILP, and shall not be subject to the financial needs test until:

- (a) The vocational goal identified in the IPE, or the independent living goal identified in the ILP, is achieved;
- (b) The individual's record of service is closed; or
- (c) The individual's IPE or ILP is amended.

- 124.18 If requested by an eligible individual or the authorized representative of an eligible individual, the Rehabilitation Services Administration shall assist such eligible individual or authorized representative with the financial needs test to ensure that the eligible individual has an equal opportunity to receive vocational rehabilitation services.

125 OWNERSHIP OF GOODS

- 125.1 The District of Columbia shall retain legal title to tools, equipment, and supplies provided as part of an individual's rehabilitation program, except as provided in § 125.3.
- 125.2 An individual shall return goods provided by the Rehabilitation Services Administration if:
- (a) Requested by the Rehabilitation Services Administration;
 - (b) The goods are no longer needed for the individual's vocational rehabilitation program or independent living program; or
 - (c) The individual is no longer participating in the vocational rehabilitation or independent living program, as agreed to and specified in the individual's signed loaner equipment agreement, Individualized Plan for Employment (IPE), or Independent Living Plan (ILP).
- 125.3 The Rehabilitation Services Administration may assign the eligible individual title to the following:
- (a) Medical appliances not transferable to or useable by another person;
 - (b) Goods provided as part of a business plan that was approved with the understanding that the goods would be used as collateral to leverage funds for the business; and
 - (c) Devices or technologies that are associated with the client's disability or are required for the client to maintain the employment outcome.

126 ORDER OF SELECTION OF SERVICES

- 126.1 The Rehabilitation Services Administration shall provide vocational rehabilitation services based on the availability of funds, in accordance with 34 CFR § 361.36.
- 126.2 If the Rehabilitation Services Administration determines that sufficient funds are not available to provide vocational rehabilitation services to all eligible individuals, the Rehabilitation Services Administration, in consultation with the State Rehabilitation Council in accordance with 34 CFR § 361.36(f), shall

institute an order of selection for services, providing services on a priority basis to eligible individuals with the most significant to the least significant disability, at the time of rendering services, as follows:

- (a) Category I: Individual with a most significant disability.
An individual with a most significant disability is an individual:
 - (1) Who first meets the definition of an individual with a significant disability pursuant to § 199 and paragraph (b) of this subsection;
 - (2) Who has a severe physical or mental impairment that seriously limits three or more functional capacities such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome; and
 - (3) Whose vocational rehabilitation can be expected to require multiple, highly specialized vocational rehabilitation services over an extended period of time;
- (b) Category II: Individual with a significant disability.
An individual with a significant disability is an individual:
 - (1) Who first meets the definition of an individual with a significant disability pursuant to § 199;
 - (2) Who has a severe physical or mental impairment that seriously limits one or more functional capacities such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of an employment outcome;
 - (3) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
 - (4) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or

combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation;

- (c) Category III: Individual with a disability.
An individual with a disability is an individual:
 - (1) Who has a physical or mental impairment that does not meet the criteria set forth in paragraphs (a) and (b) of this subsection;
 - (2) Whose impairment constitutes or results in a substantial impediment to employment; and
 - (3) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

126.3 If an order of selection is implemented, the Rehabilitation Services Administration shall:

- (a) Notify all eligible individuals of the priority categories in the order of selection, their assignment to a particular category, and their right to appeal their category assignment;
- (b) Provide services to each individual in a higher category before serving any individual in a lower category;
- (c) Maintain a waiting list of each eligible individual that cannot be served;
- (d) Notify each individual as funding becomes available and the individual becomes next in line for services, based on the priority established by the order of selection and the waiting list; and
- (e) Provide each eligible individual who cannot be served with information and referrals to other federal and District of Columbia programs which may be able to meet their employment needs.

126.4 The order of selection shall not apply to:

- (a) An individual applying for or receiving Independent Living Services under Title VII of the Rehabilitation Act; or
- (b) An individual who has begun to receive services under an Individualized Plan for Employment (IPE) before the effective date of the order of selection.

127 TRANSITION SERVICES FOR SECONDARY SCHOOL STUDENTS

127.1 The Rehabilitation Services Administration shall provide transition services to students with disabilities, as defined by § 199 of these regulations, who are referred to the Rehabilitation Services Administration or who apply for transition services. Transition services shall plan for a student's employment outcome or independent living after the student leaves secondary education.

127.2 The Rehabilitation Services Administration shall provide transition services two years before the student's anticipated exit from secondary education. Transition services shall include the following:

- (a) Outreach through technical assistance and general information to secondary school staff, students and families on the vocational rehabilitation program and independent living program, including information on eligibility requirements, the application process, scope of services, and linkages with other agencies and organizations to enable the student to move smoothly from secondary education to vocational activities leading to an employment outcome, or an independent living program leading to self-sufficiency;
- (b) Consultation and technical assistance to students referred to or requesting transition services in development of vocational or independent living goals that will be identified in their Individualized Plan for Employment (IPE) or Independent Living Plan (ILP), based on the student's needs, taking into account the student's preferences and interests; and
- (c) During the student's final academic year of secondary education, the Rehabilitation Services Administration shall:
 - (1) Assist the student with completing and submitting an application for vocational rehabilitation or independent living services;
 - (2) Determine the student's eligibility for services; and
 - (3) Develop and approve an IPE or Independent Living Plan (ILP) for each eligible student consistent with §§ 110 and 111, to be implemented upon the student's exiting the secondary educational institution.

127.3 The Rehabilitation Services Administration shall implement an eligible student's IPE or ILP after the student exits the secondary educational institution.

- 127.4 The Rehabilitation Services Administration shall enter into a formal interagency agreement with the state education agency for collaboration in the provision of transition services that includes:
- (a) Consultation and technical assistance to educational agencies in planning for the transition of students with disabilities from school to post school activities, including vocational rehabilitation and independent living services;
 - (b) Joint transition planning that facilitates the development, completion and approval of the student's Individualized Education Plan (IEP), IPE, and ILP;
 - (c) The roles and responsibilities, including financial responsibilities, of each agency; and
 - (d) Procedures for outreach to and identification of students with disabilities who are in need of transition services.

Title 29 DCMR, Chapter 1 Section 199 is amended by deleting the present language of Section 199 and replacing it with the following:

199. DEFINITIONS

- 199.1 For purposes of this chapter, the following terms and phrases shall have the meanings ascribed below:

Act - the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 701 et seq.).

Applicant - an individual who submits an application for vocational rehabilitation services.

Appropriate modes of communication - specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

Assistive technology device - any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

C.F.R. - the Code of Federal Regulations.

Client - an applicant for vocational rehabilitation services who meets the eligibility requirements.

Client Assistance Program or CAP - the program established pursuant to 29 USC § 732 for the purpose of advising, informing, assisting and advocating for applicants and eligible individuals regarding all services and benefits available pursuant to this chapter.

Client Services Division - a division within the Rehabilitation Services Administration, Department of Human Services.

Comparable services and benefits - are:

- (a) Services and benefits that are:
 - (1) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;
 - (2) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with § 111; and
 - (3) Commensurate to the services that the individual would otherwise receive from the Rehabilitation Services Administration.
- (b) For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

Competitive employment – work that is:

- (a) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and
- (b) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who do not have a disability.

Department of Human Services - a department within the government of the District of Columbia.

Determination - an official written decision made or an action taken by a representative of the District of Columbia, Department of Human Services, Rehabilitation Services Administration, affecting eligibility or the provision of services.

Eligible individual - an applicant for vocational rehabilitation services who meets the eligibility requirements of § 103.1.

Employment outcome - with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment, as defined above, in the integrated labor market,

supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Extended employment - work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act (29 U.S.C § 214(c)).

Extended services - ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment and that are provided by a District of Columbia agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under 34 C.F.R. Part 361 and 34 C.F.R. Part 363 after an individual with a most significant disability has made the transition from support provided by the Client Services Division.

Extreme medical risk - a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

Fair Labor Standards Act - the United States Fair Labor Standards Act of 1938, as amended, and codified at 29 U.S.C. §§ 201 *et seq.*

Family member (for purposes of receiving vocational rehabilitation services in accordance with subsection 113.2(i)) - an individual:

- (a) Who either:
 - (1) Is a relative or guardian of an applicant or eligible individual; or
 - (2) Lives in the same household as an applicant or eligible individual;
- (b) Who has a substantial interest in the well-being of that individual; and
- (c) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

Good cause - a substantial reason, a legitimate justification for acting or failing to act.

Impartial hearing officer - the individual appointed by the Director that is selected to carry out the responsibilities associated with sections 135 through 169.

Income Maintenance Administration Programs - vocational training programs that the Department of Human Services, Income Maintenance Administration may provide for recipients of such programs as Temporary Assistance for Needy Families (TANF) and the Food Stamp Program.

Independent Living Plan (ILP) - a plan that describes the established goals or objectives, the services to be provided and the anticipated duration of the services program necessary to enable an individual with a significant disability to become self-sufficient.

Individual with a disability (except as defined in the subsection that immediately follows) - is individual:

- (a) Who has a physical or mental impairment;
- (b) Whose impairment constitutes or results in a substantial impediment to employment; and
- (c) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

Individual with a disability for purposes of 34 C.F.R §§ 361.5(b)(14), 361.13(a), 361.13(b)(1), 361.17(a), (b), (c), and (j), 361.18(b), 361.19, 361.20, 361.23(b)(2), 361.29(a) and (d)(5), and 361.51(b) - means an individual who:

- (a) Has a physical or mental impairment that substantially limits one or more major life activities;
- (b) Has a record of a physical or mental impairment that substantially limits one or more major life activities; or
- (c) Is regarded as having an impairment that limits one or more major life activities.

Individual with a most significant disability - means an individual with a significant disability who is provided priority vocational services in those states that have implemented order of selection procedures pursuant to 34 C.F.R. § 361.36.

Individual with a significant disability - an individual with a disability:

- (a) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;
- (b) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and
- (c) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or

pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

Individual's representative - any representative chosen in writing by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

Individualized Plan for Employment (IPE) - a plan prepared pursuant to sections 110 and 111 of this chapter.

Integrated setting -

- (a) With respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals;
- (b) With respect to an employment outcome, means a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

Maintenance - monetary support provided to an individual for expenses that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

Mediation - the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies.

Natural Supports - supports that are typically available to all workers in the workplace. Workplace supports may include, but are not limited to, such things as a coworker mentor who assists an employee in learning the job, a supervisor who monitors work performance, a co-worker who assists the client in developing social relationships, orientation training or other company sponsored training events, an employee assistance program and other supports that may be available.

One-Stop Center or One-Stop service delivery system - a service delivery system that is structured pursuant to Title I of the Workforce Investment Act of 1998, in accordance with 20 C.F.R. Part 662.

Personal assistance services - a range of services provided by one (1) or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services shall be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

Physical or mental impairment -

- (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or
- (b) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Physical or mental restoration services - corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment; diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws; dentistry, nursing services, necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services; drugs and supplies; prosthetic and orthotic devices; eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with state licensure laws; podiatry; physical, occupation and speech and hearing therapy; mental health services; treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment; special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and other medical or medically related rehabilitation services.

Post-employment services - one (1) or more of the services identified in section 113 of this chapter that are provided subsequent to the achievement of an employment outcome and that are

necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Note to Post-employment services- Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Post-employment services are to be provided under an amended individualized plan for employment; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, e.g., the individual's employment is jeopardized because of conflicts with supervisors or coworkers, and the individual needs mental health services and counseling to maintain the employment; to regain employment, e.g., the individual's job is eliminated through reorganization and new placement services are needed; and to advance in employment, e.g., the employment is no longer consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Post-secondary education - community/junior colleges, proprietary/private career schools, technical institutes, hospital schools of nursing, colleges, universities, and other post-secondary training.

Psycho-educational Assessment - an evaluation of an individual's intellectual and educational functioning, limitations, achievement, and potential, and may also include identification of a secondary emotional disorder.

Rehabilitation Services Administration - an administration within the Department of Human Services, District of Columbia.

Rehabilitation technology - the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

Sheltered setting - a non-integrated work environment designed for applicants and eligible individuals that are closely supervised by other individuals who provide the necessary vocational services and supports.

State— any of the 50 United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.

State Director - the Administrator of the Rehabilitation Services Administration.

Statewide workforce investment system - a system described in section 111(d)(2) of the Workforce Investment Act of 1998 (29 U.S.C. § 2821(d)(2)).

State plan - the State plan submitted by the District of Columbia for vocational rehabilitation services submitted pursuant to 34 C.F.R. § 361.10.

State Rehabilitation Council - the council established within the District of Columbia pursuant to 34 C.F.R. §§ 361.16 and 17 for the purpose of assisting the Client Services Division with the development, implementation, and revision of policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services.

Students with disabilities – a student who:

- (a) Who has a physical or mental impairment;
- (b) Whose impairment constitutes or results in a substantial impediment to employment;
- (c) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services or who are candidates for independent living services to enable them to become self-sufficient; and
- (d) Who is in the last two years of secondary education in a D.C. Public School, D.C. Public Charter School, or Board of Education Public Charter School or who are D.C. Public School students attending a private secondary school.

Substantial impediment to employment - that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

Supported employment -

- (a) Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities:
 - (1) For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

- (2) Who, because of the nature and severity of their disabilities, need intensive supported employment services and extended services after transition to perform this work; or
- (b) Transitional employment for individuals with the most significant disabilities due to mental illness.

Supported employment services - ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment that are:

- (a) For a period of time not to exceed eighteen (18) months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and
- (b) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

Transition services - a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services shall promote or facilitate the achievement of the employment outcome identified in the student's individualized plan for employment.

Transitional employment (as used in the definition of "supported employment") - a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services shall include continuing sequential job placements until job permanency is achieved.

Transportation - travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation, vehicles and systems.

U.S.C. - United States Code.

Vocational Rehabilitation services - those services listed within section 113.2 of this chapter that are necessary to determine an applicant's eligibility or that are necessary for an eligible individual to prepare for, secure, retain, or regain employment consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Washington, D.C. Metropolitan Area - areas in the District of Columbia, Maryland and Virginia that can be accessed by public transportation.

Workforce Investment Act - Title I of the Workforce Investment Act of 1998, which is codified generally at 29 U.S.C. §§ 2801 et seq.

Persons who wish to comment on these proposed rules may do so in writing no later than thirty (30) days after the publication of this notice in the D.C. Register. Comments should be forwarded to the Administrator of the Rehabilitation Services Rehabilitation Services Administration, 810 First Street, N.E. 10th floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained from the Rehabilitation Services Rehabilitation Services Administration at the address stated above.